THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO. 4813 OF 2005

ORDER:

1. This writ petition has been filed by the petitioners who are four in number assailing the action of respondents 1 and 2 in granting lease of land bearing S.Nos.288/1, 288/3 and 293 admeasuring Ac.5.84 cents situated in Palkur Village, Banaganapalli Mandal, Kurnool District in favour of respondents 7 to 10. The 3rd petitioner-Shaik Abdul Rasool has given his sworn affidavit in support of the writ petition.

2. The case of the petitioners as set out in the affidavit filed in support of the writ petition be summarized in brief as follows:

An Ashurkhana known as Hzt. Abbas Ashurkhana has been registered as a wakf institution and is endowed with landed properties under T.D.No.106 in Sy.Nos.176/1, 288/1, 288/3 and 293 admeasuring Ac.7.92 cents, Ac.1.78 cents, Ac.1.06 cents and Ac.3.00 cents respectively totaling Ac.13.76 cents situated at Palukuru village, Banaganapalli Mandal, Kurnool District. The office of muthavalliship is hereditary by custom. One Abdul Rasool who is grand father of 3rd petitioner was the muthavalli. He died in 1968 leaving behind four sons. The Assistant Director of Mines and Geology-2nd respondent granted mining lease in favour of respondents 7 to 10 in respect of Sy.Nos. 176/1, 288/1, 288/3 and 293 without consent from the State Wakf Board-5th respondent and without any verification as to whether the properties are wakf properties or not in collusion with R7 to R10. Respondents 1 and 2 have no authority to grant mining lease in respect of wakf properties. A lease of wakf property for agricultural purposes will be granted

for a period of one year and even the Wakf Board cannot grant lease for more than three years. On coming to know the illegal activities of mining in S.Nos.176/1, 288/1, 288/3 and 293 by R7 to R10, the petitioners brought it to the notice of Inspector Auditor(Wakf) through a letter dated 3.2.2005 marking copies of it to all concerned with a request to stop illegal mining operations of the Wakf properties immediately. The Inspector Auditor (Wakf) addressed a letter to the District Collector-3rd respondent to take necessary action for protecting the wakf properties. Since there is no response from any of the respondents 1 to 4, the petitioners have filed this writ petition.

3. Respondents 1 and 2 filed counter. It is stated in the counter affidavit that quarry lease has been granted in favour of A.Sekhar Reddy-R10 and V.Ramulu-R7 of Palukuru village in respect of S.Nos.293 admeasuring 1 hectre and S.No.288/1 admeasuring 0.720 hectre basing on the no objection certificate issued by the Mandal Revenue Officer, Palukuru. Respondents 1 and 2 have acted in accordance with the A.P.M.M.C.Rules, 1966 after getting no objection certificate from the Mandal Revenue Officer, Banaganapalli and therefore the action of respondents 1 and 2 is legal and proper. If, after verification, the revenue authorities withdraw earlier the no objection certificates, the same will be brought to the notice of higher authorities for initiating action in the matter. I deem it appropriate to refer the relevant portion of the counter-affidavit and it is thus:

" ……The Mandal Revenue Officer while issuing No Objection Certificate has to take care to verify the title of the subject land. Once the Mandal Revenue Officer given No Objection Certificate the 2nd respondent herein need not attempt to further clarified about the title of the and this office has come to know that there is a claim of ownership of the subject lands by Wakf Board only after receiving the request from the 6th respondent Sri.M.Inayath, Inspector Auditor, Wakf Board, Kurnool through letter No.15/Wakf/KNL/2005, dt.3.2.2005.

This department has granted quarry leases in the subject lands for 2 individuals only as detailed below:

Sl. Name of the Location Extent Period of

No.Lessee Hect. Lease

1. Sri A.Sekhar Reddy S.No.293 of 1.000 5-8-2002 to

Palkur (V) Palkur(V) 4-8-2012

2. Sri.V.Ramudu S.No.288/1 of 0.720 7-6-2004 to

Palkur (V) Palkur (V) 6-6-2014

In respect of Sri.A.Sekhar Reddy the Mandal Revenue Officer, Banaganapalle vide Rc.No.B/9/2002, dated 10-1-2002 has issued No Objection Certificate stating that the land in S.No.293 of Palkur is patta land as per village accounts.

In respect of Sri.V.Ramudu, the Mandal Revenue Officer, Banaganapalle vide Rc.B/1213/2003, Dt.20-8-2003 has issued No Objection Certificate stating that the land in S.No.288/1 of Palkur village is an Inam land in the name of diety "PALAGHATI PEERLU" as per the village accounts. And the same land has been acquired by Sri.Manjula Yellappa and Sampangi Ramudu by way of registered document and this land is under the possession and enjoyment of Sri.V.Ramdu by way of agreement executed from the Pattadar. Basing on the No Objection Certificate quarry leases are granted and executed in the name of above two lease holders."

4. The Wakf Board-5th respondent filed counter affidavit. It is stated in the counter affidavit that Ashoorkhana with its attached property in S.Nos.176/1, Sy.No.288/1, Sy.No.288/3, Sy.No.293 totally admeasuring Ac.13.76 cents situated at Palukuru village, Banaganapally Mandal, Kurnool District is a notified Wakf published in A.P.Gazette part II dated 2.5.1963. The lands notified are attached to Ashoorkhana under the title deed No.106 meant for service to the Ashoorkhana. On coming to know the illegal activities of R7 to R10, the Inspector Auditor (Wakf) addressed a letter to Mandal Revenue Officer, Banaganapalli on 3.2.2005 informing the illegal activities over the Wakf properties. He also addressed a letter to Assistant Director of Mines and Geology to stop the work. The land in S.Nos.176/1, Sy.No.288/1, Sy.No.288/3, Sy.No.293 totally admeasuring Ac.13.76 cents situated at Palukuru village, Banaganapally Mandal, Kurnool District are wakf lands and therefore lease granted by the authority other than the Wakf Board has no legal sanctity.

5. Counter of 8th respondent in brief is that in the year 1984 the father of 4th petitioner Late Sri.Hussain Miah sold Ac.1-16 cents in Sy.No.288/3 under a registered sale deed and since then he has been in possession and enjoyment of the same. All minerals in lands vested in the State Government and therefore the State Government is entitled to grant lease under the provisions of Mines and Mineral Development Act. The petitioners are not entitled to object to the grant of mining leases by the Statement.

6. Learned counsel appearing for the petitioners submits that the property has been registered as a wakf property and that the no objection certificate issued by the Mandal Revenue Officer, Banaganapalli is not valid. Therefore, the lease granted to respondents 7 to 10, basing on the said certificate, is not valid. He further submits that the petitioners have *locus standi* to file the writ petition, since they being the lineal descendants of original Muthawalli Abdul Rasool, whose name is found in Column No.11 of Survey Commissioner's Report.

7. Sri E. Ayyapu Reddy, learned senior counsel appearing on behalf of respondents 7 and 8 submits that the property was conveyed under registered sale deed in favour of Yellappa and Ramudu and thereafter the lands have been purchased by respondents 7 and 8. He further submits that as on this day, the property is not in the hands of the alleged Muthawallis and that the petitioners have not specifically averred in the writ petition of their functioning as Muthawallis and, therefore, they have no *locus standi* to question the no objection certificate granted by the Mandal Revenue Officer, Banaganapalli with respect to the lands in question.

8. Learned counsel appearing for the fifth respondent-Wakf Board submits that the grant of lease of wakf land, without the consent of the wakf board, is not valid and, therefore, no objection certificate issued by the Mandal Revenue Officer is required to be declared as invalid.

9. Learned counsel appearing for respondent No.10 submits that the land in question is not a wakf land and that respondent No.10 purchased the property from Pedda Hussain Bi and Chinna Hussain Bi represented by mother Mahaboobi, under registered sale deed dated 14-05-1981.

10. The question that survives for consideration is whether the property is a wakf property and if it is a wakf property, the no objection certificate issued by the Mandal Revenue Officer is valid.

11. Learned counsel appearing for the petitioners making copious references to the entries in Commissioner's Report on the Survey of Wakfs submits that Abdul Rasool Saheb and his brother Hussian Saheb are the heriditory Muthawallis by custom and petitioners being their lineal descendants are entitled to question the no objection certificate issued by the Mandal Revenue Officer, Banaganapalli.

12. The question whether the properties are the wakf properties or not is beyond the scope of the writ jurisdiction.

13. It has come on record that two sons of Abdul Rasool have sold the property under the registered sale deed dated 06-12-1985 in favour of Yellappa and Ramudu. In case the sales are invalid, it is for the wakf board to take necessary action to set aside the sales as provided under the Act. The Mandal Revenue Officer granted no objection certificate taking note of the entries in the revenue records. The entries made in the revenue records or the registered sale deeds executed by the two sons of Abdul Rasool would not come in any way of the wakf board taking action for restoration of the property to the Ashrukhana, in accordance with law. So long as the registered sale deeds exist, the action of the Mandal Revenue Officer in granting no objection certificate cannot be found fault.

14. Accordingly, the writ petition is disposed of with the above observations.

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tnb/Lrkm. 03-08-2005.

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO. 4813 OF 2005

DT:03-08-2005

Between:

Shaikh Khaja Hussain, s/o Late Abdul

Rasool, Agriculturist,

Aged about 58 years, residing at

Palkur village, Banaganapalli Mandal,

Kurnool District and **3 others**

..... Petitioners

A n d

The Deputy Director,

Mines and Geology,

Kurnool and **9 others**

…. Respondents